

PETITION FOR WRIT OF CERTIORARI
IN THE SUPREME COURT OF MISSISSIPPI

STATE OF MISSISSIPPI

VS.

NO. 2013-CA-02046-COA

RONNIE BOYD

PETITION FOR WRIT OF CERTIORARI

COMES NOW THE PETITIONER/APPELLANT, RONNIE BOYD, and files this his
Petition for Writ of Certiorari and would show unto this Honorable Court the following:

QUESTION PRESENTED FOR REVIEW

**WHETHER THE DECISION RENDERED BY THE COURT OF APPEALS IN THIS
CASE CONFLICTS WITH A DECISION RENDERED IN A PRIOR DECISION BY THE
MISSISSIPPI SUPREME COURT IN WILSON VS. STATE OF MISSISSIPPI 81 So.3d
1067 (Miss. 2012)**

JURISDICTION

A decision was entered in this case by the Mississippi Court of Appeals on August 11,
2015.

The Appellant timely filed his petition for rehearing on August 25, 2015. The Court of Appeals entered an order denying the Appellant's petition for rehearing on December 1, 2015. The basis for invoking the jurisdiction of the Mississippi Supreme Court is that the Court of Appeals rendered a decision in conflict with the decision rendered by the Mississippi Supreme Court in Wilson vs. State of Mississippi, 81 So.3d 1067 (Miss. 2012). The Appellant alleged that his trial attorney's failure to communicate a plea offer to him prior to trial and her lack of communication with the defendant resulted in him entering a guilty plea that was unknowingly and involuntarily made.

STATEMENT OF THE CASE

On July 15, 2008, the Appellant was indicted in Oktibbeha County Circuit Court in Cause Number 2008-0272-CRH. He was indicted on three counts: 1 count of bribery, 1 count of attempting to tamper with physical evidence, and 1 count of possession of a controlled substance, i.e. marijuana; upon the request of the petitioner the court appointed the Honorable Stephanie Mallette to represent him. The State filed a motion to amend the Appellant's indictment on January 27, 2009 to charge him as an habitual offender under Miss. Code Ann § 99-19-83, also known as the "big" habitual. The following day, January 28, 2014, rather than to risk facing 30 years in prison, the Appellant decided upon the prompting of counsel, see R. V.I page 98 to accept the plea offer made by the State to plead guilty to bribery and to a sentence to serve a term of ten years without the possibility of parole. This was against his better judgment; however, he decided with the prompting of counsel to plead guilty. The Court accepted the Appellant's plea of guilty to bribery and sentenced the Appellant as an habitual offender under Miss. Code Ann § 99-19-81 as set out in Count 1 of his indictment. As stated Appellant was sentenced to 10 years in the Mississippi Department of Corrections without the possibility of parole and as well he was ordered to pay a fine of five thousand dollars (\$5,000.00). Counts 2 and 3 of Appellant's indictment were retired to the files based upon his guilty plea in Count 1. The Appellant filed his petition for post conviction relief alleging ineffective assistance of counsel. The trial court denied said petition and the Appellant timely filed his appeal with the Mississippi Supreme Court on December 3, 2013. The Court of Appeals affirmed the trial court's decision on August 11, 2015. The Appellant filed his Motion for Rehearing on August 25, 2015. The Court of Appeals denied the Motion for Rehearing on December 1, 2015.

DISCUSSION OF THE QUESTION

At the post conviction relief hearing, Boyd testified that his family retained Mr. Rod Ray on January 27th to represent him. Boyd testified that Mr. Ray was present on the day of the trial and tried to enter an appearance on Mr. Boyd's behalf but the trial court would not allow the substitution as it was the day of the trial. Tr. 59. Boyd testified that at that point he felt terrible and under duress because he was being made to go to trial which was something he felt totally unprepared to do. Tr. 59. Boyd was able to show that his attorney's performance was deficient. Boyd testified that he was never told which charge he was going to trial on. Tr. 50. Boyd testified that no one told him what was going on. Tr. Pg. 50. Boyd testified that his next meeting with Ms. Mallett was January 28 which was the day set for trial. Tr. 51. Boyd testified that he told Ms. Mallett on January 27 or 28th that he wanted to fire her because he felt like she was not prepared to go to trial. Tr. 53. Boyd also testified that he asked Mallett about her investigation of his case and that Mallett told him that he did not have any witnesses lined up to testify on his behalf. Tr. 53. Boyd testified that Mallett told him that he did not need any witnesses because the state had everyone lined up who participated in the case. Tr. 54. Boyd testified that Mallett never came to see him while he was in jail. Tr. 56. Boyd testified that Mallett did not discuss any research or share any research with him that she had performed on his case. Tr. 56. Boyd testified that prior to being told about the 10 year mandatory plea deal, he did not know how many years his charges carried. Tr. 56.

Boyd testified that he does not remember Mallett going over any discovery with him. Tr. 56. Boyd testified that he does not feel that his guilty plea was knowingly, voluntarily and intelligently made because he did not want to enter a guilty plea under Ms. Mallett because he

was trying to hire Mr. Rod Ray or someone that could prepare him and tell him what was going on in his case because he did not know anything. Tr. 56. In *Wilson vs. State*, 81 So.3d 1067, 1086 (Miss. 2012), the Mississippi Supreme Court held:

In order to warrant a substitution of counsel during trial, the defendant must show good cause, such as a conflict of interest, a complete breakdown in communication or an irreconcilable conflict which leads to an apparently unjust verdict.

Citations omitted.

And

If a court refuses to inquire into a seemingly substantial complaint about counsel when he has no reason to suspect the bona fides of the defendant, or if on discovering justifiable dissatisfaction a court refuses to replace the attorney, the defendant may then properly claim denial of his Sixth Amendment right.

Boyd's family retained Mr. Rod Ray on January 27th to represent him. Boyd testified that Mr. Ray was present on the day of the trial and tried to enter an appearance on Mr. Boyd's behalf but the trial court would not allow the substitution as it was the day of the trial. Tr. 59. Boyd testified that at that point he felt terrible and under duress because he was being made to go to trial which was something he felt totally unprepared to do. Tr. 59. Boyd testified that he does not remember Mallett going over any discovery with him. Tr. 56. Boyd testified that he does not feel that his guilty plea was knowingly, voluntarily and intelligently made because he did not want to enter a guilty plea under Ms. Mallett because he was trying to hire Mr. Rod Ray or someone that could prepare him and tell him what was going in his case because he did not know anything. Tr. 56. Also, Boyd's wife supplied her affidavit in which she states that she called Attorney Mallette's office six times over a two months period at her husband's request to inquire about his case and that she never spoke to Attorney Mallette. See affidavit of Stephanie Boyd, Record Excerpts pgs. 48-49. Stephanie Boyd also stated in her affidavit that she dropped by Attorney

Mallett's office to talk to her and was told by her staff that she was not in the office and that Attorney Mallett never returned any of her several telephone calls. Record Excerpts pgs. 48-49. There is no record of the trial court doing an inquiry into Boyd's complaint about his counsel at the trial of this case.

The fact that the Appellant's family hired another attorney for him and that said attorney was present in court on the day of the trial and attempted to enter his appearance should have alerted and prompted the trial court to inquire as to the reason for the requested substitution. The trial court did not inquire as to the Appellant's dissatisfaction with his appointed counsel thereby violating the Appellant's sixth amendment rights to effective assistance of counsel.

WHEREFORE, the Petitioner respectfully prays that his Petition for Writ of Certiorari be granted.

Respectfully Submitted,
RONNIE BOYD,
PETITIONER/APPELLANT
BY: /S/ Bennie L. Jones, Jr.
Bennie L. Jones, Jr.,
Attorney for the Petitioner/Appellant
Miss. Bar No. 3185

OF COUNSEL:
Bennie L. Jones, Jr. And Associates
P.O. Box 357
West Point, Miss. 39773
Tel. (662) 494-1024
Fax (662) 494-0643

Roberta Lynn Haughton, Esq.,
The Haughton Law Firm
142 W. Morrow Street
West Point, Ms 39773
Tel: (662) 257-0147
MSB# 10164

CERTIFICATE OF SERVICE

I, Bennie L. Jones, Jr., attorney for the Petitioner/Appellant Ronnie Boyd do hereby
certify that I have this day served a true and correct copy of the above and foregoing Petition for
Writ of Certiorari on the following via the MEC court filing system:

Hon. BARBARA BYRD
SPECIAL ASSISTANT ATTORNEY GENERAL
MISSISSIPPI BAR NO. 104233
OFFICE OF THE ATTORNEY GENERAL
POST OFFICE BOX 220
JACKSON, MS 39205-0220

Hon. Lee J. Howard IV
Circuit Court Judge
P O Box 1344
Starkville, MS 39760
Trial Judge

Hon. Stephanie Mallette
Mallette Law Office
P O Box 80170
Starkville, MS 39760
Counsel for Appellant in the trial court

Notification has been sent to the following by U.S. mail, postage prepaid:

Mr. Ronnie Boyd
#87711 374
2460 /hwy 25N
Louisville, MS 39339
Petitioner/Appellant

So certified on this the 15th day of December, 2015.

/s/ Bennie L. Jones, Jr.
Bennie L. Jones, Jr.

CERTIFICATE OF FILING

I, Bennie L. Jones, Jr., attorney for the Petitioner/Appellant Ronnie Boyd do hereby certify that I have this day filed the above and foregoing Petition for Writ of Certiorari via the MEC court filing system the Clerk of the Mississippi Supreme Court.

So certified on this the 15th day of December, 2015.

/s/ Bennie L. Jones, Jr.
Bennie L. Jones,